

Draft Minutes
Delta Protection Commission Meeting
November 15, 2001

1. Call to Order/Roll Call.

The meeting was called to order at 6:30 p.m. by Chairman Patrick N. McCarty. Commissioners present were: Bedford, Brean, Cabaldon, Calone, Curtis, Ferguson, Glover, Macaulay, Sanders, Shaffer, van Loben Sels, and Wilson. Commissioners absent were: Coglianese, Curry, Gleason, McGowan, Nottoli, and Thomson.

2. Public Comment

Dennis Majors, CALFED, presented an update on the Delta Regional Implementation Plan. He said the Commission had submitted comments and he has recommended new language to address the issues, particularly regarding acquisition of agricultural land. He noted that \$30 million in federal funds has been designated for the CALFED program, however State funds requested for a recreation master plan in FY 02-03 have been denied due to budget shortfalls. Mr. Majors said a draft of the CALFED Delta Ecosystem Restoration Plan would be available in early 2002. A Deltawide, one-day forum on CALFED activities will be held in January.

Chairman McCarty asked about the status of Liberty Island that was acquired with CALFED funds and is currently flooded; Mr. Majors said he would look into the matter.

3. Minutes of the Last Meeting

Commissioner Macaulay asked for a correction, page three, from DWR *may* support active engagement of the Delta Protection Commission to DWR *does* support active engagement of the Delta Protection Commission.

Commissioner Ferguson asked for a correction, page two, reference to South Delta Water Agency should be Central Delta Water Agency.

Commissioner Sanders asked for a correction, page ten, paragraph five, third sentence, delete repeated sentence.

On a motion by Commission Cabaldon, and a second by Commission Wilson, the draft minutes as amended were approved by unanimous voice vote [Commissioners absent from the September meeting abstained].

4. Chairman's Report

Chairman McCarty said the next meeting of the Commission is scheduled for Thursday, January 24, 2002 in the Jean Harvie Community Center in Walnut Grove. Tentatively scheduled are: consideration of the CALFED ecosystem restoration grant applications

and a briefing from Ducks Unlimited on their "Rice in the Delta" project. Chairman McCarty congratulated Commissioners Marci Coglianesse and Christopher Cabaldon and former Commissioner Ryan Broddrick on their appointments to the new Bay Delta Public Advisory Council.

Chairman McCarty asked Commissioner Ferguson to report on the Ag Committee meeting. Commissioner Ferguson said the Ag Committee met in October, had briefings on the San Joaquin County habitat conservation plan and on ag land appraising. He said the Committee is developing a mission statement and is reviewing the Ag Land Conversion memo. He said the Committee decided to move forward with a series of five meetings in the five Delta counties to discuss a new RC&D program; after those meeting the Ag Committee will make a recommendation to the Commission. Commissioner Ferguson said the Committee reviewed and discussed the AFT grant application for ag land protection and planning.

5. Commissioner Comments/Announcements

Commissioner Macaulay noted that the Delta waterways and levees are important State resources and said that surveillance has been increased to protect those resources.

6. Attorney General's Report

Dan Siegel, Attorney General's Office, announced that the CALFED lawsuit filed last year against the Delta Protection Commission was dismissed. He said there had been a settlement agreement negotiated with Orange County Water District. He said the remaining CALFED lawsuits do not name the Commission; one is about to be dismissed on "ripeness" issues, a second may be dismissed and the third will be heard in the Spring.

Commissioner Shaffer asked if the settlement of the Orange County Water District suit addressed facilitating water transfers from the Sierra to southern California water districts; Mr. Siegel said the settlement included a series of acknowledgements of the commitments of the Record of Decision.

7. Executive Director's Report

Margit Aramburu, Executive Director, reviewed the material included in the mailing packet, and the material distributed at the Commission meeting. She noted the meetings attended by staff on behalf of the Commission including several legislative hearings, the San Francisco Estuary Project Conference, and many CALFED meetings. Ms Aramburu noted that a request for funds for recreation planning for the Delta has been returned due to the estimated budget shortfall. She said DPC and CALFED staffs are hoping to work on the regional planning project next as time allows; a project description and schedule may be discussed in January. She said AFT would be submitting the application for Delta agriculture planning funds soon. She also announced a CALFED In-Delta Storage meeting will be held on November 27; a new mural in Walnut Grove will be unveiled on December 1; and the Olympic Torch will pass through Walnut Grove on January 19.

Chairman McCarty agreed that staff should include projects that are ag service/ag support as agriculture in the memo regarding land use changes. He said that staff should develop a list of definitions for the Ag Committee to review, such as wildlife friendly ag, etc.

Commissioner Shaffer said he is interested in broadening the definition of agriculture to include multiple uses that provide an economic return for the farmer, such as growing grain for wildlife.

Chairman McCarty also noted that the Commission's budget is small, but staff is attempting to save money where possible to address the looming State budget shortfalls.

Commissioner Macaulay noted that DWR regularly prepares land use surveys of Counties; that information is available to the Commission for its GIS.

8. Briefing on Big Break Recreation Area, Oakley, Contra Costa County

Staff of East Bay Regional Park District briefed the Commission on the proposed new regional park that includes water-covered areas in the Primary Zone and shoreline areas in the Secondary Zone. This is the first new park approved in the Delta since the Commission was created. The management plan was approved by the EBRPD Board on October 16, 2001.

Tom Mikkelsen reviewed the history of EBRPD's program in the Delta. He said the acquisition and planning for the park has been underway for many years. Big Break was farmed until 1928 and has been flooded since that time. He showed an aerial photo of the limited area that is dry most of the time; 40 acres on the Lauritzen site. He said the proposed park will be largely preserve and natural area including the water-covered areas. The small upland area will be developed with the Delta Science Center, parking, trails, picnic areas, and other recreational facilities. He showed the connections to other regional trails maintained by EBRPD.

There were no Commissioner questions or comments. There was no action scheduled for this agenda item.

9. Briefing on Delta Wetlands Project, Contra Costa and San Joaquin Counties

The Commission reviewed information about the Delta Wetlands Project proposal to convert two islands to water storage (Webb and Bacon Islands) and two islands to habitat and retain 4,621 acres of agriculture as part of a mosaic of habitat (Holland and Bouldin Islands).

Ms Aramburu said the Commission had a briefing from DWR staff on the CALFED proposal to provide new water storage in the Delta. Part of the current evaluations by DWR staff is an evaluation of the Delta Wetlands Project, to determine if that project would meet CALFED's goals for in-Delta water storage. At that meeting, there were

requests for information strictly about the Delta Wetlands Project. Ms Aramburu said the Delta Wetlands project is a privately developed project, which includes most of four Delta islands, approximately 20,000 acres. Two islands--Bacon and Webb--would serve as water storage. Two islands-- Bouldin and part of Holland--would be managed as habitat islands. The habitat islands would be half agriculture, and half managed wetlands and ponds. She said the agricultural acreage would NOT be commercial agriculture; that agriculture would be part of a mosaic of habitat. She said the project was well underway when the Commission first met in 1993. The project has completed several environmental documents, and has received all the required permits for the project except the Corps permit. Ms Aramburu noted the project would use the existing intakes and outfalls to take surplus water onto the islands at periods of high flow; and would release it as needed by future purchasers of the water. Delta Wetlands does not have any contracts with water buyers at this time.

Ms Aramburu noted the Commission's law states "Permit water reservoir and habitat development that is compatible with other uses." Staff comments in the past have focused on impacts that could adversely impact nearby landowners, such as seepage and levee stability. The Commission has not received a briefing on the project in the past, nor has it taken a position on the project, due to its advanced state of design when the Commission was created.

Commissioner van Loben Sels asked if the surrounding Reclamation Districts had been briefed on the project; Ms Aramburu said there has been public review and comment on the several environmental documents. Commissioner van Loben Sels said there are some important flood control and levee issues that should be discussed with the surrounding Districts. He expressed his concern that strengthening the levees on the four Delta Wetlands Project islands could adversely impact the levees and flooding on the surrounding agricultural islands.

Chairman McCarty asked for public comments; there were none.

Jim Easton, General Manager, Delta Wetlands, said the project filed for water rights permits in 1987 and prepared a DEIR/EIS in 1990. He said the project was then revised and a new DEIR/EIS prepared in 1995 and a supplemental document prepared in 2000. The project has all State approvals and only needs a Corps permit. The project will only take surplus water under stringent conditions. He noted that the project proponents have met with neighbors and have included elements to address issues such as seepage. Mr. Easton said the project could provide 170,000 ac ft of new water and storage for environmental water and water management flexibility.

Dave Forkel, Delta Wetlands, said Delta Wetlands met with neighboring RDs for two years to develop the seepage monitoring and remedies. He explained that the levees would be brought to the PL 84-99 ag standard as part of the project. He said that the agriculture on the habitat islands would be part commercial and part habitat; he added he would provide the percentages to staff.

Commissioner van Loben Sels asked if public funds would pay for the levee improvements and commented that all the Delta levees need to be brought to a higher standard together or there will be impacts to the surrounding islands; Mr. Forkel said the islands are currently in the Levee Subventions program and receiving matching funds for levee maintenance. He said the levee work would not affect flood elevations and would not raise the levees substantially, rather future work would strengthen the levees. Mr. Easton said the Delta Wetlands project would be part of the CALFED program and the levee work would be coordinated with the CALFED program for increased levee stability.

Commissioner Bedford said water follows the path of least resistance and levees are raised higher than those on adjacent islands, then the islands with lower, less improved levees become more vulnerable to flooding; Mr. Forkel stated the Delta Wetlands levees would not be higher than the surrounding levees. He noted that one of the problems in this area is the waves from Franks Tract, and levees on the Delta Wetlands islands will protect islands to the east. Mr. Easton commented that CALFED is important because the program will tie together many elements--farming, ecology, flood control and water supply.

Commissioner Calone asked if the Delta Wetlands project will only take water on peak flows; Mr. Forkel said yes, peak flows that are generally in the winter.

Commissioner Shaffer asked if historic flooding on Holland and Webb Tracts were caused by overtopping or by levee breaks; Mr. Forkel said the levees were overtopped which then resulted in interior levee erosion and levee breaks.

Commissioner Wilson said his primary concern is whether Delta Wetlands will be a private project, where problems can be addressed, or a State or federal project, where it is more difficult to remedy future problems like seepage or wave action; Mr. Easton said the CALFED ROD has directed CALFED staff to evaluate acquisition of the Delta Wetlands project to meet the goal for in-Delta storage. He said the agreements associated with the project would go with the land.

Commissioner Macaulay said DWR has a strong commitment to Delta levee maintenance in partnership with the Reclamation Districts, and he agreed that the Delta Wetlands levees help provide protection to levees to the east. He noted that State is generally accessible to address concerns from adjoining landowners.

Commissioner van Loben Sels agreed that wave fetch is a threat and commented that State ownership would be preferable to federal ownership. He asked if the levees will be armored in the interior and could the islands be filled more quickly and thus provide flood benefits; Mr. Forkel said the levees would be armored, but said the rate of intake would be regulated by the fisheries agencies. Commissioner van Loben Sels commented that the conversion of Bouldin Island to habitat would result in more water on the Island, such as summer flooding, summer brood ponds and permanent ponds, and could have seepage impacts to Staten and Tyler Islands to the north. He suggested that Delta

Wetlands should monitor the existing water elevations on Staten and Tyler Islands now and after conversion; Mr. Forkel said Bouldin would be drier under the habitat scenario than it currently is for ag.

Commissioner Wilson said Bouldin Island is currently used for growing corn and wheat which is wildlife-friendly ag. He asked what tonnage of product would be produced from the two habitat islands; Mr. Forkel said about half of the 9,000 acres would be farmed, and 60 to 80% would be harvested for sale.

Chairman McCarty noted the staff report is not accurate; Ms Aramburu said she would clarify acreage of commercial agriculture and report back to the Commission.

Commissioner Shaffer asked that the Commission consider a broader definition of agriculture and said if a farmer is paid to grow crops for wildlife, then that is an economic use of the land and should be included in a definition of agriculture. He asked about future raising of the levees; Mr. Forkel said the levees need to be continually raised to maintain them at the same elevation above sea level.

Mr. Easton said he would be glad to provide information or briefings to any Commissioner who wants additional information about the proposed project.

Chairman McCarty asked for comments from the public.

Steve Mello, Tyler Island, said he has several concerns:

- Loss of ag land and the resulting socio-economic impacts, including secondary impacts
- The need to address safe harbor and impacts of special status species from the habitat islands to surrounding lands.
- The levee subvention program's limited funds should not be used to pay for levee work for a State/federal water storage project.
- The CALFED ecosystem restoration program is ahead of the other CALFED programs and CALFED should work first to increase Delta levee system stability and reliability before more funds are spent on other CALFED programs.

There were no Commissioner questions or comments. There was no action scheduled for this agenda item.

10. Review and Possible Adoption of Position of Support for American Farmland Trust's CALFED Grant Request

The Commission reviewed the application of American Farmland Trust (AFT) for funds to develop Best Management Practices for wildlife-friendly agriculture in the Delta.

Ms Aramburu said the Commission reviewed a description of the AFT application at the last meeting and indicated general support, pending more specific information. AFT has submitted an application for funding to CALFED and included in that application the role

the Commission would play in development and review of best management practices for wildlife friendly agriculture in the Delta.

Chairman McCarty asked for public comments; there were none.

John McCaull, AFT, said an application has been submitted for CALFED funds.

Commissioner Shaffer asked how much money had been requested; Mr. McCaull said \$450,000 for a two to three year project.

Commissioner Wilson asked if the study would address socio-economic impacts; Mr. McCaull said the study would look at regional impacts and how to keep farmers in business.

Commissioner van Loben Sels asked if the study would address the wildlife and economic impacts of fallowing; Mr. McCaull said yes. He said he would work with existing mapping data.

Commissioner Sanders asked if the mapping will be GIS format; Mr. McCaull said yes.

On a motion by Commissioner Wilson, and a second by Commissioner Glover, the Commission voted unanimously by voice vote to adopt a position of support for the study.

11. Review and Possible Adoption of Concurrence for Staten Island Acquisition and Management Agreements and Contracts, San Joaquin County

Staff of The Nature Conservancy briefed the Commission on the conditions and tasks required as part of the contracts to fund acquisition of Staten Island. Acquisition funds were provided by Proposition 204 (Secretary for Resources) and Proposition 13 (Director of the Department of Water Resources). TNC staff described how the conditions of the contracts conform to the comments provided by the Delta Protection Commission on the acquisition of Staten Island.

Note: Mr. Eaton has asked that the Commission accept the following amendment to the staff report distributed on this agenda item:

The acquisition price is \$30 million for the 9,106 acres of Staten Island, existing buildings, facilities and equipment. The fair market value of the bare land was determined to be \$27.194 million and the fair market value of the improvements was valued at \$2.235 million; and the fair market value of the personal property (i.e. machinery and equipment were valued at \$1.988 million. The grand total of the appraised valuation is \$31.42 million (exceeding the negotiated price by \$1.42 million). These dollar values were established by independent appraisal and that independent appraisal has been reviewed and approved by the California Departments of Water Resources and General Services.

Ms Aramburu said the Commission first reviewed this project--acquisition of Staten Island by The Nature Conservancy with CALFED funds--last July. At that time the Commission made several comments. In addition, in December, when all the CALFED ecosystem restoration projects were approved by the CALFED Policy Group, the Commission's comments were reiterated. Comments made at the Policy Group meeting were also sent in a letter to Secretary Nichols. Patrick Wright, Executive Officer of CALFED, has asked that the Commission review the final package associated with the acquisition and indicate approval or conformance with the Commission's comments. Ms Aramburu said she was invited to attend some of the meetings where the agreements were discussed, and she did make comments to the staff working on the agreements.

Mike Eaton, Director, Cosumnes and Delta Projects, The Nature Conservancy (TNC), said the funding documents have been approved and the close of escrow is expected next Tuesday. He noted the challenge of doing something that has not been done before, setting up a framework for achieving three objectives on Staten Island: continue agriculture; protect and enhance habitat values; and participate in the North Delta flood management program. Mr. Eaton said the forum for determining the final management scheme for Staten Island is the North Delta Improvements planning process. He said TNC will be participating in that process, and urged the Commission to actively participate. He said TNC's goal is to continue agriculture on Staten Island in order to provide seasonable habitat for the Sandhill crane and other migratory birds.

Mr. Eaton said TNC plans to create a new non-profit entity to take ownership of the Island and supervise its long-term management. He said he wants the Commission and San Joaquin County to help in developing the new entity and its mission. He noted that the current owners would continue to maintain and operate the Island for a year, until January 2003. At that time, the new non-profit entity should be in place and will take over management. He said TNC would retain ownership until the North Delta Improvements planning process is complete, and then will likely transfer ownership to the new non-profit entity. He noted the key issue is balancing flood control purposes with agriculture and wildlife habitat.

Chairman McCarty asked for public comment.

Tom Zuckerman, Central Delta Water Agency, said CDWA is concerned that TNC is not planning to maintain ownership in the long term, and the two entities that funded purchase of the Island--Resources Agency and Department of Water Resources--do not have interest or knowledge of the agricultural component of Staten Island's management plan. CDWA recommends the Commission does have such an interest, and noted the Commission is referenced throughout the Staten Island legal documents. He said the CDWA requests that the Commission request the contracting parties include the Commission as a signatory to the legal documents, to allow the Commission oversight of the long-term management of Staten Island to ensure that agriculture is continued.

Steve Mello, Tyler Island, said he understands that the goal of the acquisition of Staten Island is to maintain the wildlife-friendly agriculture. He noted several concerns about the long-term management of the island:

- Seepage on adjacent/nearby islands
- Levee stability
- The length of time it would take to drain the Island after intentionally flooding
- The regional benefits of Staten as a floodway vs. dredging the surrounding channels
- The elevation of water at a proposed weir if the water in the nearby channels is at the 100 year flood elevation
- The impacts to Walnut Grove-Thornton Road if Staten Island is used as a floodway.

Ben Hulse, San Joaquin County Planning Director, said the County supports the effort to preserve agriculture in the County and said the County will continue to work with TNC to ensure agriculture will continue on Staten for the long-term. He said the County supports the creation of a new non-profit entity to manage the Island. He said there would be concerns about how often the Island can flood and still remain economically viable and productive in its agricultural capacity. In response to Chairman McCarty, Mr. Hulse said he supports the Commission be a signatory to the legal documents.

Chairman McCarty closed the public hearing.

Commissioner van Loben Sels asked if TNC would retain ownership if the North Delta Improvements planning process extends beyond the expected 10-year period; Mr. Eaton said yes, if the planning process is moving forward. Mr. Eaton added that TNC might want to place an easement on McCormack Williamson Tract and resell it for agricultural use.

Commissioner Ferguson asked if there is adequate funding if the planning process continues for ten years; Mr. Eaton said hopefully the farm revenues would support TNC staff continuing to participate.

Commissioner Sanders asked regarding Attachment G, if the North Delta Improvements planning process is not completed in ten years will G still apply to DWR, or will G apply only if the North Delta Improvements process is in effect; Mr. Eaton said there is an incentive for TNC to stay involved because if DWR purchases the Island the dynamics will change. Ms Aramburu added that there are two agreements and even if DWR takes ownership of the Island the second agreement still pertains.

Commissioner Shaffer noted that the monitoring described on page 4 would be carried out by biologists; he suggested that an agronomist be included in the monitoring; Mr. Eaton agreed.

Commissioner Bedford asked if there is an environmental document under preparation for the North Delta project; Mr. Eaton said CALFED is just starting the environmental review process and scoping will take place in 2002.

Commissioner Sanders asked Mr. Siegel what options are open to the Commission regarding becoming a signatory to the legal documents; Mr. Siegel said there could be an explicit third party beneficiary clause, or the Commission could become a signatory to one or both of the legal agreements.

Commissioner Macaulay said the Commission can and should have a role in the planning process and should be aggressive about pursuing that role and he suggested the Commission send comments to CALFED and DWR regarding the legal documents and the planning process, and pursue a specific role in the planning process.

Commissioner Wilson agreed the Commission should be involved and should carefully monitor the flood planning to ensure Sacramento County does not usurp the flood control benefits of a floodway on Staten Island to the detriment of the Delta Islands. He agreed that the local non-profit is a good idea, but agreed there is still a question about the long-term management of Staten Island if the current planning process is not successful.

Chairman McCarty said the legal agreements invite the Commission to participate, but do not give the Commission authority to ensure the goals of the easement program are implemented in the long term. He suggested pursuing a third party beneficiary role. He said if a local non-profit is created the Commission should take a leadership role since Staten Island is such a large area within the Primary Zone (9,200 acres out of 378,000 acres of ag in the Primary Zone or about 2.5% of the Primary Zone). He said this project is a cornerstone of change or evolution of the Delta, and the Commission would be remiss in not taking a leadership role.

Commissioner Ferguson said he thinks this is a great opportunity for the Commission to get directly involved in implementing its Plan. He moved that the Commission participate as a third party beneficiary in the legal agreements, and that the Commission pursue a seat on the non-profit organization to oversee management of Staten Island.

On the motion by Commissioner Ferguson, and second by Commissioner Wilson, the Commission voted unanimously by voice vote to pursue its role as a signatory on the legal documents and a seat on the new non-profit.

Commissioner Curtis noted the staff recommendation was to prepare a letter indicating whether or not the legal document met the comments presented earlier, and he said the motion did not specifically address the staff recommendation; Chairman McCarty said he understood that the motion indicated that the Commission wants additional action to ensure that the earlier concerns will be addressed. He directed staff and counsel to figure out how the Commission can have more responsibility for ensuring that wildlife-friendly agriculture continues on Staten Island.

Chairman McCarty asked Mr. Eaton for his comments on the Commission's actions; Mr. Eaton understands the Commission's concerns and actions, however, he emphasized, the Commission should delve into the North Delta Implementation planning process and particularly work with Sacramento County on flood control issues.

Reconsideration of Agenda Item #3, Minutes of the Last Meeting.

Ms Aramburu noted that Steve Roberts, DWR, had submitted changes to the draft minutes and asked the Commission to consider amending the motion to adopt the draft minutes to include Mr. Roberts's comments.

On a motion by Commission Macaulay and a second by Commissioner Calone, the draft minutes as previously amended were amended to also include Mr. Roberts's comments.

12. Adjournment. The meeting was adjourned at 9:05 p.m.